

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

**NOTEBOOM RV LLC,
Plaintiff,**

vs.

**CLEAR BLUE SPECIALTY
INSURANCE COMPANY and
MARSH & MCLENNAN AGENCY LLC,
Defendants.**

Civ. 23-4110

COMPLAINT

COMES NOW, Plaintiff, Noteboom RV LLC (hereinafter “Noteboom RV”), by and through their attorneys of record, Michael F. Marlow and Dylan M. Miller, and brings its causes of action against Defendants Clear Blue Specialty Insurance Company (hereinafter “Clear Blue”) and Marsh & McLennan Agency LLC (hereinafter “Marsh McLennan”) (collectively referred to as “Defendants”) and states and claims as follows:

PARTIES

1. Noteboom RV is a recreational vehicle dealer formed under the laws of the State of South Dakota, having its principal place of business in Harrisburg, South Dakota.
2. Clear Blue is a corporation formed under the laws of the State of North Carolina, having its principal place of business in Raleigh, North Carolina.
3. Marsh McLennan is an insurance agency and brokerage business formed under the laws of the State of New York, having headquarters in New York, New York.

JURISDICTION AND VENUE

4. Jurisdiction, forum, and venue are proper for this insurance litigation in the Southern Division of the United States District Court for the District of South Dakota, pursuant to 28 U.S.C. § 1391(b)(2).

5. The amount in controversy, exclusive of interest and costs, exceeds the sum of Seventy-Five Thousand Dollars (\$75,000.00) and this Court has jurisdiction pursuant to 28 USC § 1332.

GENERAL ALLEGATIONS

6. Noteboom RV had a long-standing relationship with Marsh McLennan and its predecessor regarding insuring its entire recreational vehicle (“RV”) business and inventory at Noteboom RV’s dealership and storage locations.

7. At all times material, agents of Marsh McLennan were aware that Noteboom RV utilized two locations—one for storage of RV inventory and one for the retail sale of RVs—and knew Noteboom RV would regularly transfer its inventory between the two locations.

8. On prior occasions, Marsh McLennan routinely procured insurance coverage for Noteboom RV’s entire RV inventory at both its dealership and storage locations.

9. At Marsh McLennan’s suggestion, Noteboom RV applied for insurance from a new company, Clear Blue, in the spring of 2023.

10. When applying for the insurance policy through Clear Blue, Noteboom RV used an electronic insurance application form supplied by Marsh McLennan, the pertinent portions of which are attached as Exhibit 1.

11. The application was partially completed by Greg Noteboom, the owner of Noteboom RV, and forwarded to Marsh McLennan for completion by Marsh McLennan and submission to Clear Blue by Marsh McLennan.

12. Agents of Marsh McLennan completed the remaining portions and submitted the application to Clear Blue, but the application failed to list the storage location.

13. Although Marsh McLennan knew of the storage location and knew Noteboom RV was relying on Marsh McLennan to complete the application, Marsh McLennan did not list the storage location on the application and did not inform Noteboom RV of this omission.

14. Clear Blue offered insurance coverage on Noteboom RV's entire inventory and Noteboom RV paid the applicable premium on the entire inventory.

15. Noteboom RV received an estimated policy quote and paid a down payment of \$16,797.38, towards the quoted premium and fees, which totaled \$97,122.38, and insurance coverage commenced on April 18, 2022 ("Insurance Policy"). A copy of the official policy and the RV endorsement are attached as Exhibit 2. Noteboom RV ultimately paid the entire \$97,122.38 as originally quoted.

16. On or about May 29, 2022, Noteboom RV suffered hail damage to approximately 246 RVs located on the two locations, including 56 RVs at its storage location.

17. At all times relevant before and after the hailstorm, all premiums and fees were paid current on all hail-damaged RVs at both locations.

18. Noteboom RV filed a claim of loss on the damaged RVs through Mobility Claims Group, an entity hired by Clear Blue to adjust the hail loss, but the claim was challenged based on the location of the 56 RVs at the time of loss.

19. On June 23, 2022, Noteboom RV notified an agent of Marsh McLennan about the challenge to coverage. Marsh McLennan's agent asserted that the denial was an attempt to deny coverage on a technicality; that Marsh McLennan was in negotiations with Clear Blue to remedy the situation; and that Noteboom RV would be made whole. The emails between Greg Noteboom and Marsh McLennan's agent are attached as Exhibit 3.

20. Noteboom RV relied upon the promise of Marsh McLennan that Noteboom RV would be made whole and did not file suit or take any further action at that point.

21. On July 5, 2022, Mobility Claims Group notified Noteboom RV that Clear Blue denied its claim for damages on the 56 RVs at the storage location since the RVs were not located at the dealership at the time of loss. A copy of the letter is attached as Exhibit 4.

22. When denying the claim, Clear Blue or its agents asserted the insurance policy allows for claims only if the inventory is located at a location listed on the policy, even if premiums were paid on inventory located at other locations.

23. Upon receiving the formal written denial of coverage, Noteboom RV immediately contacted Marsh McLennan to ensure the storage location was added to its insurance policy.

24. On January 11, 2023, Marsh McLennan informed Noteboom RV that adding the storage location to its Insurance Policy resulted in no additional increase in premium since the amount of inventory insured remained the same.

25. The omission of the storage location from the application was not a material omission since it did not result in an increased premium.

26. Noteboom RV suffered uncompensated damages to 56 RVs totaling \$752,993.08 as shown on Exhibit 5.

27. After the deductible amount of \$2,500 per RV, the total insured loss to Noteboom RV is \$612,993.08.

28. Noteboom RV at all times relevant, made good faith efforts to ensure its locations and inventory were properly and adequately insured. Noteboom RV never intended to deceive or increase the risk or hazard faced by Clear Blue.

29. After Clear Blue formally denied coverage, Noteboom RV requested Marsh McLennan to make it whole as promised, but Marsh McLennan refused to do so.

30. At no time did Clear Blue tender or offer to tender the premiums charged and paid for inventory located on the storage lot.

COUNT 1: DECLARATORY JUDGMENT
(Clear Blue)

31. Noteboom RV realleges all preceding material paragraphs.

32. Noteboom RV seeks a judicial determination that the insurance policy issued by Clear Blue provides coverage for the 56 damaged RVs located at Noteboom RV's storage location.

33. Noteboom RV seeks a judicial determination ordering Clear Blue to pay it \$612,993.08 and all other applicable costs, interest and expenses associated with this litigation.

COUNT 2: CONVERSION
(Clear Blue)

34. Noteboom RV realleges all preceding material paragraphs.

35. Noteboom RV paid Clear Blue the premium charged for Noteboom RV's entire RV inventory at both its business and storage locations.

36. Clear Blue charged and retained premiums on all Noteboom RV's inventory but refused to provide insurance coverage for Noteboom RV's inventory damage at its storage location.

37. Clear Blue converted Noteboom RV's premiums by retaining them after refusing to insure inventory losses at Noteboom RV's storage location.

38. Clear Blue exercised dominion and control over Noteboom RV's premiums without notice, knowledge, consent, or authorization. Clear Blue's dominion and control seriously interfered with Noteboom RV's rights and any interests to the premiums wrongfully withheld.

COUNT 3: NEGLIGENT PROCUREMENT OF INSURANCE COVERAGE

(Marsh McLennan)

39. Noteboom RV realleges all preceding material paragraphs.

40. Noteboom RV sought specific insurance coverage from Marsh McLennan for all RV inventory owned by Noteboom RV.

41. Noteboom RV fully informed Marsh McLennan of all material information necessary for Noteboom RV to receive appropriate insurance coverage for its entire RV inventory at both its dealership and storage locations.

42. At all times material, Marsh McLennan was intimately familiar with Noteboom RV's business operation, business and storage locations, and insurance needs.

43. Marsh McLennan knew Noteboom RV required insurance covering its entire RV inventory at both its dealership and storage locations.

44. At all times material, Marsh McLennan knew or reasonably should have known all pertinent information required to properly include Noteboom RV's two locations on the insurance application.

45. As Noteboom RV's insurance agent, Marsh McLennan was required to use reasonable care, diligence, and judgment in procuring Noteboom RV's requested insurance.

46. Marsh McLennan owed Noteboom RV duties, including but not limited to:
- a. Investigating and understanding the facts necessary to obtain appropriate insurance coverage for all inventory owned by Noteboom RV, including the amount and location of that inventory;
 - b. Having in place appropriate processes and procedures for accurately stating all of Noteboom RV's physical locations and inventory on Clear Blue's insurance application;
 - c. Identifying and including Noteboom RV's storage location in the insurance application before submitting it to Clear Blue to meet Noteboom RV's insurance needs;
 - d. Procuring insurance of the kind requested or desired, with the provisions specified by the Noteboom RV;
 - e. Confirming the insurance coverage obtained from Clear Blue provided coverage for all inventory owned by Noteboom RV.
 - f. Obtaining insurance coverage on all RV inventory owned by Noteboom RV.
47. Marsh McLennan breached its duties owed to Noteboom RV by:
- a. Failing to investigate and understand the facts necessary to obtain appropriate insurance coverage for all inventory owned by Noteboom RV, including the amount and location of that inventory;
 - b. Failing to have in place appropriate processes and procedures for accurately stating all of Noteboom RV's physical locations and inventory on the Clear Blue application;

- c. Failing to identify and include Noteboom RV's storage location in the insurance application before submitting it to Clear Blue even though Marsh McLennan had knowledge of the storage location and Noteboom RV's insurance needs;
- d. Failing to procure insurance of the kind requested or desired, with the provisions specified by the Noteboom RV;
- e. Failing to confirm the insurance coverage obtained from Clear Blue provided coverage for all inventory owned by Noteboom RV; and
- f. Failing to obtain insurance coverage on all RV inventory owned by Noteboom RV.

48. Marsh McLennan's breaches of its duties proximately and legally caused Noteboom RV's damages, including but not limited to, financial loss directly related to Clear Blue's denial of coverage.

49. But for Marsh McLennan's negligence, Noteboom RV's entire RV inventory would have been adequately covered for the May 29, 2022 hailstorm.

COUNT 4: BREACH OF CONTRACT
(Marsh McLennan)

50. Noteboom RV realleges all preceding material paragraphs.

51. Marsh McLennan's agent represented to Noteboom RV that it would negotiate with Clear Blue to remedy the situation on Noteboom RV's behalf and that in any event Noteboom RV would be made whole for damage to the inventory on the storage lot.

52. Noteboom RV relied on Marsh McLennan's promise, forbore on its rights to sue, and took no further action at that time to resolve its claim with Blue Clear.

53. Marsh McLennan knew or should have known that Noteboom RV would rely on its promises.

54. Marsh McLennan's representations were express assurances made in the furtherance of the service agreement it entered into with Noteboom RV for the purpose of brokering and procuring insurance plans and policies for Noteboom RV.

55. Marsh McLennan breached its contract with Noteboom RV when it refused to honor the promise it made to Noteboom RV to make Noteboom RV whole for its losses.

56. Because Marsh McLennan breached its promises, Noteboom RV is entitled to damages as provided by law.

COUNT 5: BAD FAITH
(Clear Blue)

57. Noteboom RV realleges all preceding material paragraphs.

58. Clear Blue consciously engaged in wrongdoing by refusing coverage while retaining the premiums paid for the entire Noteboom RV inventory.

59. There is no reasonable basis for Clear Blue to retain the premiums on the entire damaged inventory while at the same time denying coverage.

60. Clear Blue committed bad faith by denying coverage while at the same time retaining the premiums paid for the entire Noteboom RV inventory.

COUNT 6: PUNITIVE DAMAGES
(Clear Blue)

61. Noteboom RV realleges all preceding material paragraphs.

62. Clear Blue is aware of its obligations to charge and retain premiums only on Noteboom RV's insured inventory.

63. By not refunding premiums paid for inventory Clear Blue alleges was not covered, Clear Blue converted funds belonging to Noteboom RV.

64. Clear Blue's conversion of the insurance premiums while refusing coverage is oppressive, fraudulent, or malicious. The conversion was committed intentionally or through willful and wanton misconduct, entitling Noteboom RV to punitive damages pursuant to SDCL § 21-3-2.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests and prays for the following against the Defendants:

1. Under Count 1, that the Court determine the Insurance Policy issued to Noteboom RV by Clear Blue provides insurance coverage for inventory located at the storage location damaged in the May 29, 2022 hailstorm and award Noteboom RV the full \$612,993.08 in damages;
2. In the absence of the relief requested in Count 1, that the Court award damages against Clear Blue for Count 2 (conversion);
3. In the absence of the relief requested in Count 1, Noteboom RV requests that the Court award damages from Marsh McLennan under Counts 3 and 4 for \$612,993.08 less any amounts awarded under Count 2;
4. Under Counts 5 and 6, that the Court award general and punitive damages against Clear Blue for bad faith conversion of premiums paid to Clear Blue;
5. For pre-judgment and post-judgment interest as allowed by law;
6. Plaintiff's attorneys' fees, costs and disbursements as allowed by law; and
7. Such other relief as the Court deems just and proper.

Dated this 18th day of July 2023.

A handwritten signature in blue ink, appearing to read "Michael F. Marlow", is written over a horizontal line.

Michael F. Marlow

Dylan M. Miller

Marlow, Woodward & Huff, Prof. LLC

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Yankton, SD 57078

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Attorneys for Plaintiff

JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Noteboom RV LLC

(b) County of Residence of First Listed Plaintiff Lincoln, SD
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Michael F. Marlow, Marlow, Woodward & Huff, Prof. LLC,
P.O. Box 667, Yankton, SD 57078; (605) 665-5009

DEFENDANTS

Clear Blue Specialty Insurance Company and Marsh & McLennan Agency LLC

County of Residence of First Listed Defendant Wake, NC
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1332

Brief description of cause:
Denial of insurance coverage

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

7-18-2023

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

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